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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,623	03/30/2004	Harold W. Trammel II	79436	3469
David W. Highet Chief Intellectual Property Counsel Becton, Dickinson and Company 1 Becton Drive, MC 089 Franklin Lakes, NJ 07417				
			EXAMINER	
			BEISNER, WILLIAM H	
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			04/30/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,623

Applicant(s)

TRAMMEL ET AL.

Examiner

WILLIAM H. BEISNER

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 19-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8 is/are rejected.
- 7) ☒ Claim(s) 5-7, 9-13 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 14-17 and 19-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/1/2007.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 3, 4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Locke et al.(US 5,782,035).

With respect to claim 1, the reference of Locke et al. discloses a dish assembly (See Figures 11 and 14) comprising a dish (Fig.11:122 or 124) having a polygonal bottom wall with an outer periphery and a side wall enclosure extending up from the bottom wall, the side wall enclosure including a plurality of substantially planar panels and non-planar corners connecting adjacent panels, the side wall enclosure including a top edge spaced from the bottom wall, the side wall enclosure including a plurality of engagement structures (Fig.3:70) formed on inwardly facing surface regions of the substantially planar panels at locations spaced from the non-planar corners (See Figures 11 and 14). The assembly also includes a splash guard (Fig.14:186) having

a frame-shaped top wall seated on the top edge of the side wall enclosure (See Figure 14) and engagement flanges (Fig.8:150; Fig.12:168; column 10, lines 9-31) extending down from the top wall and nesting with, and interiorly of, portions of the planar panels, the engagement flanges (Fig.12:168) including engagement structures (Fig.8:150) releasably engaged with the engagement structures (Fig. 3:70) on the planar panels.

With respect to claim 2, the engagement structures (Fig.3:70) are formed on each of the planar panels of the side wall enclosure (See Figures 11 and 14).

With respect to claim 3, the engagement structures (Fig.3:70) are elongated and define a direction of elongation substantially parallel to the bottom wall of the dish.

With respect to claim 4, the engagement structure (Fig.3:70) is rectangular.

With respect to claim 8, the top wall of the splash guard (Fig.14:186) is substantially parallel to the bottom wall of the dish.

Allowable Subject Matter

4. Claims 5-7 and 9-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter:

The combination of the references of Lyman et al. (US 6,790,655) and Banes (US 5,593,891) fails to teach or fairly suggest a culture dish assembly including the combination of elements as recited in claim 1 including a splash guard that is engaged on the top edge of the side

wall enclosure and includes engagement flanges extending down from the top wall and nesting with, and interiorly of, portions of the planar panels forming the side wall enclosure.

Response to Arguments

6. With respect to the rejection of Claims 1, 2, 3, 4 and 8 under 35 U.S.C. 102(b) as being anticipated by Locke et al.(US 5,782,035), Applicants argue that the rejection is improper for the following reasons (See page 8 of the response filed 1/17/2008):

Locke et al. is directed to a multi-purpose automatic filling and leveling fluid basin with water transfer. A basin 10 is provided in which are formed vent ports 70 (Fig. 4). Fig. 8 depicts various attachments to the basin, which may be attached via the vent ports 70. (Col. 8, 11.9-14). A converter 166, which is shaped like a lid, may be placed on top of the basin 10, as shown in Figs. 12-14. As shown in the figures, a converter seating rim 168 is formed to extend downwardly from the converter 166.

Claim 1 is directed to a culture dish assembly which includes a culture dish and a splash guard where the splash guard includes a "frame-shaped top wall engaged on said top edge of said side wall enclosure and engagement flanges extending down from said top wall and nesting with, and interiorly of, portions of said planar panels". Locke et al. does not appear to disclose or suggest a culture dish assembly having this arrangement. It is respectfully submitted that claim 1, along with dependent claims 2, 4 and 8, are patentable over Locke et al.

Applicants' comments are not found to be persuasive because, while the reference of Locke et al. is not disclosed as a culture dish assembly, the structure of the disclosed device meets the limitations of the instant claims and the structure is capable of functioning as a culture dish. Specifically, the assembly of Locke et al. includes a splash guard (Fig.14:186) having a frame-shaped top wall seated on the top edge of the side wall enclosure (See Figure 14) and engagement flanges (Fig.8:150; Fig.12:168; column 10, lines 9-31) extending down from the top wall and nesting with, **and interiorly of**, portions of the planar panels, the engagement flanges

(Fig.12:168) including engagement structures (Fig.8:150) releasably engaged with the engagement structures (Fig. 3:70) on the planar panels.

7. With respect to the rejection of Claims 1-13 and 18 under 35 U.S.C. 103(a) as being unpatentable over Lyman et al.(US 6,790,655) in view of Banes (US 5,593,891), this rejection has been withdrawn in view of Applicants' remarks on page 9 of the remarks filed 1/17/2008.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM H. BEISNER whose telephone number is (571)272-

1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/William H. Beisner/
Primary Examiner
Art Unit 1797**

WHB